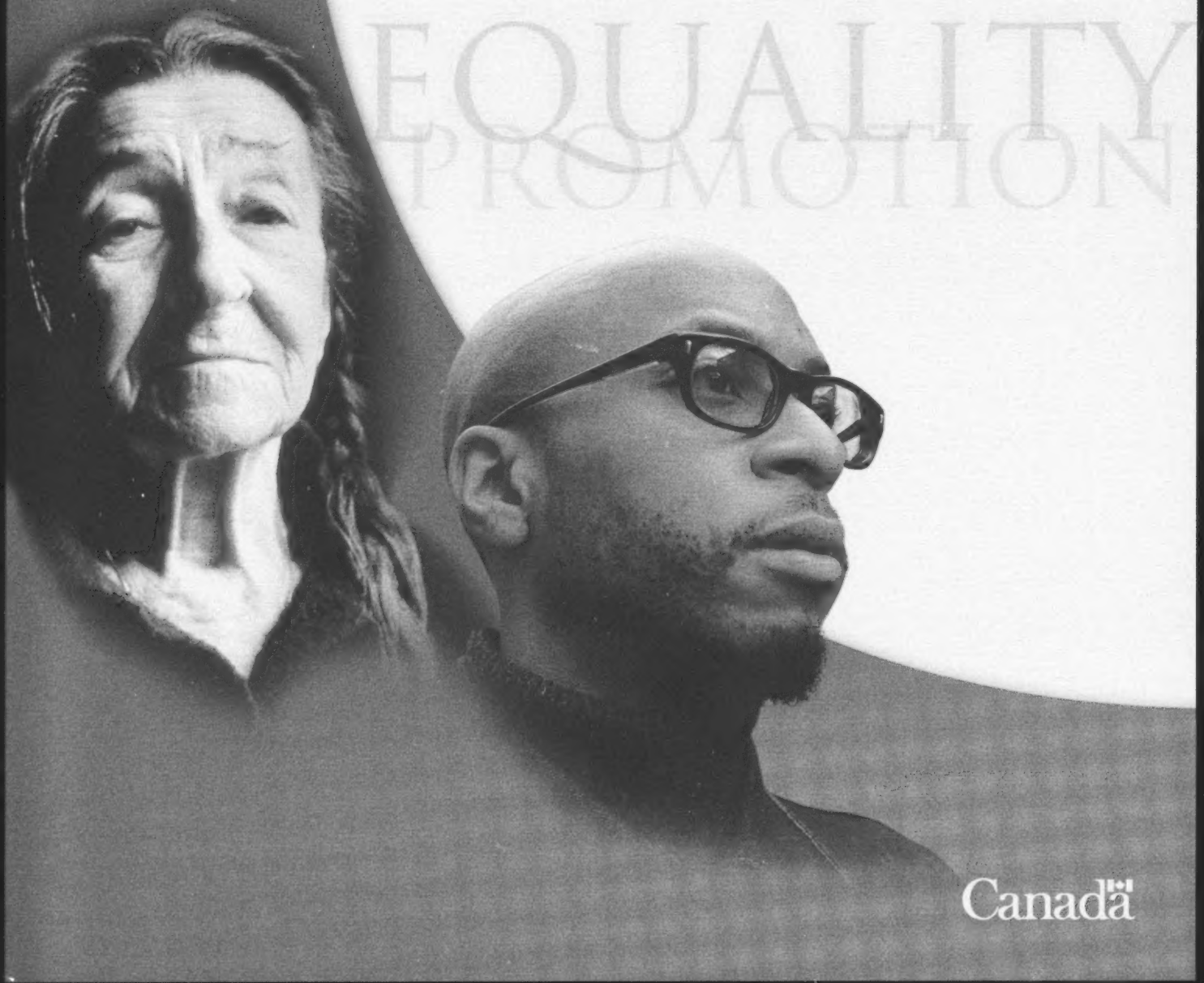
CANADIAN HUMAN RIGHTS COMMISSION
COMMISSION CANADIENNE DES DROITS DE LA PERSONNE

RESPECT
PROTECTION

2009 ANNUAL REPORT

EQUALITY
PROMOTION



Canada

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CANADIAN HUMAN RIGHTS COMMISSION
COMMISSION CANADIENNE DES DROITS DE LA PERSONNE

Jennifer Lynch, Q.C.
Chief Commissioner

Jennifer Lynch, c.r.
Présidente

March 2010

The Honourable Noël A. Kinsella
Speaker of the Senate
The Senate
Ottawa, Ontario K1A 0A4

Dear Mr. Speaker:

Pursuant to section 61 of the *Canadian Human Rights Act* and section 32 of the *Employment Equity Act*, I have the honour to transmit the 2009 Annual Report of the Canadian Human Rights Commission to you for tabling in the Senate.

Yours sincerely,

Jennifer Lynch, Q.C.

Jennifer Lynch, Q.C.

Encl.

c.c.: Mr. Gary W. O'Brien
Clerk of the Senate and Clerk of the Parliament

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March 2010

The Honourable Peter Milliken, M.P.
Speaker of the House of Commons
House of Commons
Ottawa, Ontario K1A 0A6

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CHIEF COMMISSIONER'S MESSAGE

Canada has experienced profound transformation since the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act* were adopted to recognize the equal status of every individual in Canada.

Today, our approach to promoting and protecting human rights is a model for the world. Our open, inclusive and culturally diverse society is the foundation of our social, cultural and economic prosperity. Our unwavering commitment to equality, dignity and respect is part of our national identity and a source of pride for all Canadians.

These fundamental values are now so firmly rooted in our society that it would be easy to assume that everyone in this country lives a life free from discrimination. In truth, people continue to face discrimination. Many Aboriginal people in Canada do not have access to basic necessities. Many persons with disabilities face barriers and are under-employed. Thousands of university-educated immigrants work in jobs that typically require high school or less.

These and many other challenges were highlighted as the United Nations Human Rights Council reviewed Canada's human rights record. This important exercise was an opportunity to raise awareness and outline our human rights challenges.

Inspired to reach further, members of the human rights system—non-governmental organizations, advocacy groups, parliamentarians, unions, employers, legal bodies, academics, members of the media, and human rights commissions—expressed a renewed commitment to working together to identify emerging issues and influence positive changes in our society.

The Commission continued to fulfill its role as a dynamic, modern leader and partner in advancing the human rights system.

Working with Aboriginal organizations across the country, the Commission took proactive first steps towards fulfilling our responsibility to ensure that the more than 700,000 Aboriginal persons impacted by the *Indian Act* are more aware of the protections available under the *Canadian Human Rights Act*, and better able to access the Commission's services. Dialogue has also begun on how to best resolve disputes within the communities themselves.

Collaborating with Canada's workplaces, the Commission continued to develop the Human Rights Maturity Model. This roadmap and performance measurement framework can be used by organizations to foster and sustain a human rights culture. This commitment to equality and respect influences daily practices and decision-making. Our employment equity audit program assisted employers in implementing workforce practices that eliminate barriers to employment and continuously improve employment equity.

The Commission continued to provide remedies for issues of discrimination. The majority of issues were resolved before they became official complaints—reducing emotional distress, strengthening morale, increasing productivity and saving time and money.

Canadians continued to be engaged in a passionate debate over Canada's approach to balancing the right to freedom of expression and the right to equality and dignity. Our Special Report to Parliament, *Freedom of Expression and Freedom from Hate in the Internet Age*, provided parliamentarians and Canadians with a comprehensive and balanced analysis of issues.

At the international level, the Commission led the International Coordinating Committee of National Human Rights Institutions (ICC) as it focused on priorities such as business and human rights, the right to education, the rights of persons with disabilities, the rights of indigenous people and many others. The success we have experienced as Chair of the ICC will inform our future actions as we assume the role of Chair of the Commonwealth Forum of National Human Rights Institutions.

From individual Canadians, to our country's largest employers, human rights are a responsibility that belongs to everyone. Canada is a model of human rights promotion and practice for the world because our collective accomplishments and persistent challenges inspire us to refine and advance the systems put in place to promote and protect human rights.

The Commission also leads by example and sustains a professional environment built on respect, dignity and understanding. Our employees acknowledged our efforts in this regard in their responses to the recent Public Service Employee Survey which ranked the Commission as the third best place to work in the federal public service.

It is a privilege to lead a group of people dedicated to equality, respect and justice. We believe in the work that we do, and we are proud to be part of an organization committed to improving life for people in Canada.

Jennifer Lynch, Q.C.

Jennifer Lynch, Q.C.
Chief Commissioner
Canadian Human Rights Commission

THE COMMISSION

Legislation

The Canadian Human Rights Commission's founding legislation inspires a vision for Canada in which "all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have," free from discrimination.

The Commission leads the administration of the *Canadian Human Rights Act* (CHRA) and ensures compliance with the *Employment Equity Act* (EEA). The CHRA prohibits discrimination on the grounds of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted. The EEA promotes equality in the workplace of the four designated groups: women, Aboriginal peoples, persons with disabilities, and members of visible minorities.

Both laws apply the principles of equal opportunity and non-discrimination to federal government departments and agencies, Crown corporations and federally regulated private sector organizations. The provinces and territories have laws similar to the CHRA that also address discrimination.

In June 2008, following many years of debate, Aboriginal people affected by the *Indian Act* finally received full access to human rights law through Parliament's repeal of section 67 of the CHRA. This is a milestone in the development of human rights law in Canada.

Mandate

The Commission has a mandate under the CHRA to promote the core principle of equality of opportunity and to protect individuals from discrimination in employment and in the provision of services.

A key part of the Commission's mandate is to foster public understanding of the Act, the role and activities of the Commission, and of the core principle. To achieve this, the Commission may undertake any activities it considers appropriate. For example, it may conduct information programs, develop research, submit Special Reports to Parliament, comment on legislation, liaise with provincial and territorial human rights bodies, develop policy, and issue guidelines.

The mandate also includes receiving and processing complaints, investigating those that are determined to be within the Commission's jurisdiction, and making a determination as to the outcome: dismissal, conciliation, or a hearing by the Canadian Human Rights Tribunal. Throughout the complaints process, the Commission encourages settlements by providing opportunities for dialogue and mediation. The Commission also participates as a party or intervenor before courts and tribunals to make submissions that advance human rights for all Canadians.

Under the EEA, the Commission audits federally regulated employers to ensure that they are providing equal opportunities for employment. In doing so, the Commission contributes to the elimination of employment barriers in the workplace.

Commission members

The Commission is led by a full-time Chief Commissioner as Chief Executive Officer, supported by a full-time Deputy Chief Commissioner and four part-time members.

Commission employees

The Secretary General serves as the Chief Operating Officer of the Commission, guiding the daily operations of 179 employees.

Commissioners

Deputy Chief Commissioner: David Langtry

Part-time Commissioners: Robin A.M. Baird, Sandi Bell, Yvonne M. Boyer, Roch A. Fournier

RAISING AWARENESS. INFLUENCING POSITIVE CHANGE.

Canada is the most open, inclusive and culturally diverse society in the world, yet people continue to face discrimination every day. Raising Canadians' awareness of human rights issues and influencing positive and lasting societal change requires consistent and concerted efforts from a vast network—non-governmental organizations, advocacy groups, parliamentarians, labour unions, employers, legal bodies, academics, members of the media—in addition to human rights commissions.

The Commission works with several members of this extensive network to find ways to address existing challenges and identify and respond to emerging issues. Through proactive research initiatives, policy development and targeted awareness initiatives, the Commission advances the common objective of the entire human rights network: to improve the lives of people in Canada by fostering a society in which everyone experiences the equality and dignity guaranteed by our laws.

Human Rights Challenges in Canada

Canada continues to face many human rights challenges. The Commission has chosen to highlight three issues: the rights of Aboriginal peoples, the rights of persons with disabilities and race relations. The rights of Aboriginal peoples are of special concern to the Commission given the recent repeal of section 67 of the *Canadian Human Rights Act*. Disability and race are highlighted because they are, respectively, the first and second most frequent grounds for complaints filed with the Commission.

Aboriginal peoples in Canada

Aboriginal peoples in Canada experience some of the most pressing human rights challenges facing our country. Disadvantaged in education, health status, and overall quality of life, Aboriginal peoples experience higher rates of unemployment and have income levels well below the Canadian average. This group also represents one of the youngest and fastest growing populations in the country.

The challenges are enormous and the scale of issues to confront is vast and often technically complex, yet progress has been made. Through the efforts of Aboriginal communities and the federal and provincial governments, Canada has changed laws, established important legal precedents, resolved land claims, and acknowledged injustices of the past.

The *Canadian Human Rights Act* was amended in 2008 to extend full human rights protection to persons living under the *Indian Act*. Full equality before the law is a critical step in advancing Aboriginal rights; however, it is only a first step.

The Indian Act

The *Indian Act* was created in 1876 to outline the government's exclusive jurisdiction over "Indians and lands reserved for Indians," and to establish who is entitled to Indian status. For 133 years, the Act has remained relatively unchanged. The *Indian Act* is outdated and continues to be criticized for being discriminatory and paternalistic. A more modern approach to governance that recognizes First Nations' inherent right to self-government is long overdue.

Prior to 1985, an Indian woman who married a non-Indian man lost her status. On the other hand, an Indian man who married a non-Indian woman maintained his status and his wife and children also gained status. Parliament introduced Bill C-31 in 1985 in order to, among other things, remove this discriminatory provision from the *Indian Act*. In April 2009, the British Columbia Court of Appeal, in *McIvor v. Canada*, found that a residual form of discrimination remained with respect to the ability to pass on status to the next generation. The Court declared certain status provisions unconstitutional as they violate the equality provision of the *Canadian Charter of Rights and Freedoms*.

Following the *McIvor* decision, the Government of Canada expressed its intention to introduce legislative amendments in 2010. While this is welcome, amendments based solely on the *McIvor* decision may not be broad enough to address all potential forms of discrimination relating to status and band membership.

With the repeal of section 67, the Commission now has jurisdiction to accept complaints related to the *Indian Act*. The Commission has begun to receive complaints and is anticipating that they will cover a broad range of issues such as status, band membership, education, and housing.

Creating a more modern approach to governance that recognizes First Nations' inherent right to self-government will take time. In the meantime, the Government of Canada should, in dialogue with First Nations, the Commission and other relevant bodies, review the *Indian Act*'s provisions and relevant policies and programs. Such a review would identify the necessary steps to ensure compliance with the *Canadian Human Rights Act* and the equality provision in the Charter. The alternative—addressing these issues on a case-by-case basis—has been and will continue to be costly, confrontational and time consuming.

The United Nations Declaration on the Rights of Indigenous Peoples

In 2007, after decades of negotiations, the United Nations General Assembly adopted the Declaration on the Rights of Indigenous Peoples by a vote of 143 to 4. Canada, with Australia, New Zealand and the United States, was one of four nations opposed (in April 2009, Australia reviewed its position and affirmed its support).

This was an unfortunate outcome given Canada's commendable record in acknowledging Aboriginal rights and its leadership throughout the 22-year drafting process. The Government of Canada has outlined its reasons for not supporting the Declaration. The Government expressed concern that the Declaration might not fully accord with the norms and precedents that have been established through judicial decisions and negotiations on land claims and self-government. Yet, the Declaration does provide deference to existing good faith agreements between states and their indigenous peoples.

On April 8, 2008, Canada's House of Commons passed a resolution to endorse the Declaration as adopted by the United Nations and called on Parliament and the Government of Canada to "fully implement the standards contained therein." This resolution is welcome; however, a formal endorsement of the Declaration is at the discretion of the Government.

The Government's refraining from expressing its support is perceived by many key stakeholders as calling into question Canada's commitment to advancing the rights of Aboriginal peoples. The Commission urges the Government of Canada to join the growing international consensus in support of the Declaration.

Violence against Aboriginal women

Young Aboriginal women are five times more likely than other Canadian women to die as a result of violence. The Native Women's Association of Canada has documented the stories of 520 Aboriginal women who are missing or have been murdered in the last 30 years. Although each woman's story is unique, many struggled with poverty, addiction and domestic abuse, or were victims of the residential school system. In several cases, families who went to authorities to report their loved ones missing were met with indifference.

Some progress is being made to address this pressing issue. Programs to prevent violence have been initiated. Law enforcement agencies, now aware of the issue, are better trained to take it more seriously. The Native Women's Association of Canada is working to make the public aware of the issue and to urge governments at all levels to take action.

In responding to Canada's 2009 Universal Periodic Review, many of the United Nations Human Rights Council's recommendations called for a concerted effort to better protect Aboriginal women against violence, with particular emphasis on addressing their low socio-economic status and the impacts of discrimination.

A comprehensive response to this crisis requires action by all levels of government. The Commission calls on the federal government to strengthen its leadership role by ensuring national coordination and enhanced programming.

Overrepresentation of Aboriginal people in prisons

Chief Justice Beverley McLachlin called the overrepresentation of Aboriginal peoples in federal prisons a "deeply rooted, endemic social problem." There are many factors that contribute to the perpetuation of a criminal cycle—poverty, substance abuse, health issues (including mental illness), cultural insensitivity and urbanization of the Aboriginal population. These factors were highlighted in the 1999 seminal Supreme Court decision *R. v. Gladue*.

After reviewing numerous reports on Aboriginal people and systemic discrimination in the criminal justice system, the Court concluded that the findings "cry out for recognition of the magnitude and gravity of the problem, and for responses to alleviate it... The drastic overrepresentation of Aboriginal peoples within both the Canadian prison population and the criminal justice system reveals a sad and pressing social problem." Taking into account the principles of restorative justice, the Court also found that all reasonable and available sanctions other than imprisonment must be considered for all offenders, with particular attention given to the circumstances of Aboriginal offenders.

Ten years have passed since the *Gladue* decision and the situation continues to worsen. Aboriginal incarceration rates are now almost nine times the national average. The number of federally incarcerated Aboriginal women increased by 131% from 1998 to 2008. Canada's Correctional Investigator has documented that systemic barriers continue to exist in federal corrections. These include Aboriginal offenders being released later in their sentence, classified as higher risk and being more likely to have their conditional release revoked than non-Aboriginal offenders.

Many observers have argued that proposed federal sentencing reforms, such as mandatory minimum sentences, will exacerbate an already troubling human rights situation.

People with disabilities

In Canada, as elsewhere, the history of how society has treated people with disabilities is discouraging. Not so long ago, many people with disabilities were institutionalized, few were employed, and their active participation in society was greatly restricted. Much has changed. Canada was one of the first countries in the world to provide constitutional protection against disability discrimination. Attitudes and practices are changing although there is still considerable work to be done before persons with disabilities achieve full equality.

The Convention on the Rights of Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities marked a turning point in the struggle for the full recognition of the rights of the 650 million people with disabilities.

The Convention recognizes that persons with disabilities are sailing against a powerful headwind. Ensuring that they are entitled to equality, dignity, autonomy, independence and respect goes beyond treating everyone the same. It requires the removal of barriers that prevent persons with disabilities from full participation in society.

Canada looks forward to ratifying the Convention in 2010. Canada is in a good position to implement the Convention and assist other countries, particularly in the developing world, in making it a reality in the day-to-day lives of ordinary citizens.

Noble intentions must be followed by the requisite actions. In this respect, the implementation and monitoring provisions are critical as they provide a mechanism for calling countries to account for implementing the Convention. Article 33 of the Convention requires each country to:

> ... maintain, strengthen, designate or establish ... one or more independent mechanisms ... to promote, protect and monitor implementation ... (and) shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

The Government of Canada has not yet made a decision on how this provision will be implemented. Given its mandate, independence, international accreditation, and years of experience, the Commission would welcome the government's designation to serve in this role.

Removing barriers

The 2006 Census data shows that employment rates and income levels for persons with disabilities are far below those for other Canadians and a disproportionate number live in poverty. Despite employment equity programs, many qualified people with disabilities have trouble finding work.

Even though ramps and accessible washrooms are now commonplace, many people with disabilities still encounter barriers daily. For example, accessible transportation is still an issue. The 2007 Supreme Court decision in the *VIA* case, which dealt with the purchase of railroad cars that were not accessible to wheelchairs, clearly established the obligation of transportation providers to ensure fully accessible services. Barriers also continue to restrict peoples' ability to access new technologies, including telecommunications and new banking and purchasing methods; to join the workforce; and to communicate with government and service providers.

One of the most pressing issues in the area of disability is the failure of Canada to develop a comprehensive system of disability supports: the web of programs, services, tax and income programs, that are the necessary underpinnings for supporting people with disabilities to live in the community, get a good education, and enter the workplace.

Policy experts have observed that the disability support system is often disjointed and uncoordinated across the country. An example of this is the lack of portability from one province to another. Through years of effort and patience, persons may put together the various supports they need, such as attendant care and mobility aids. Yet they must start all over again if family or work requires them to move to another province.

Another example is the variation in the criteria for financial assistance from province to province. One possible mechanism to address this problem may be a federal Guaranteed Income Supplement similar to the one that is currently provided for seniors.

Solving these problems and others will require long-term and concerted effort by all levels of government. The federal government could move this process along, using existing Federal/Provincial/Territorial mechanisms, to provide much needed leadership and a national perspective.

Race relations

Canada is one of the most tolerant and diverse countries in the world. Canadians have recognized the need to accommodate cultural, linguistic and religious differences.

Canada's population is diversifying rapidly. The proportion of Canadians belonging to a visible minority group has tripled in the last 25 years. In 2006, visible minorities comprised 16.2% of the population of Canada, a proportion expected to reach 20% by 2017. This diversification contributes to a richer Canada with a stronger social, economic and cultural future.

Economic integration

Economic integration is a key pathway to social and cultural integration. Recent data and research demonstrates that income levels are significantly lower and unemployment rates are higher for immigrants than for other Canadians. People who have been in Canada 10 to 15 years are almost twice as likely as other Canadians to live below Statistics Canada's low-income cut-off.

The reasons for this are complex and cannot be blamed solely on racial discrimination. Nevertheless, racial discrimination still occurs in Canada and must be addressed. An issue of particular concern is the disconnect between education and employment. Minority communities may achieve consistently higher than average educational results, but they do not translate into access to professional and skilled employment with wages that match.

Problems with the recognition of foreign degrees contribute to this disconnect. Statistics show that 54% of recent immigrants have a university degree (compared to 22% of native-born Canadians). However, many have difficulty finding employment in their former professions, despite critical shortages, because their qualifications are not recognized in Canada.

The federal and provincial governments, in collaboration with regulatory bodies, have invested considerable effort to address this complex issue. These efforts are commendable and the Commission urges the federal and provincial governments to give continued attention to this ongoing challenge.

National security and human rights

The 9/11 attacks gave rise to a new security environment dominated by the threat of terrorism. A recent security breach, involving an airline passenger's alleged attempt to detonate explosives onboard, reminds us that issues of domestic and international security are a continuous key concern. These new security realities engage Canada, like other nations, in considering the relationship between national security and individual human rights. The introduction of security measures that would not have been contemplated ten years ago does have an impact on the individual rights enshrined in the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act*.

Issues of national security and human rights often place the two in conflict and imply that greater security leads to an erosion of rights. In a democratic, pluralist society, both must coexist. The need to ensure national security while protecting human rights is and will continue to be an important challenge for governments and their security agencies. The challenge becomes especially daunting since there are few precedents or established patterns of human rights abuses or discriminatory practices to inform the security policies and practices of the future.

As new security measures are developed, it will be important to consider the following questions in order to comply with human rights legislation: Is the measure necessary? Does evidence show that it has the desired effect? Is there an adverse impact on human rights and, if so, is this justified? Are there less discriminatory ways of achieving the same objective?

Behavioural profiling, which aims to screen individuals on the basis of observed behavioural characteristics, is one measure that may raise human rights questions in the future. If properly done, profiles can be useful in reducing the number of individuals identified for further enquiry. Criteria used should be based on intelligence. If any criterion is linked to a prohibited ground of discrimination, its use should be justified and documented.

There is no evidence to support the use of racial or ethnic profiling and most law enforcement and security agencies have established policies against this type of profiling. However, few are collecting data on the discretionary decisions made by their front line personnel. Only through documenting and monitoring these decisions can information be gathered as to whether or not inappropriate profiling is occurring. This information provides the base from which an organization can learn and adapt in order to create a culture where protecting human rights is an integral part of its daily business.

Given its mandate, the Commission is an important partner in human rights protection. Since 2006, the Commission has sponsored four research reports exploring various aspects of national security and human rights. It works with security agencies within the government to develop evidence-based approaches that respect human rights. It will continue to develop the knowledge base in this area and provide advice and expertise to better meet the challenges ahead.

The National Aboriginal Initiative

The repeal of section 67 of the *Canadian Human Rights Act* (CHRA) has created the opportunity to advance human rights for all Aboriginal people across Canada.

The Commission is actively engaged in a comprehensive strategy to work with Aboriginal communities to prepare for 2011, when the provisions of the CHRA become fully applicable to First Nations governments.

The Commission's strategy has two distinct objectives. The first is to provide knowledge and support so that communities can better recognize, respond to, and manage human rights issues. The second is to ensure that the Commission's complaint process is accessible, effective and culturally sensitive to Aboriginal peoples.

The Commission has undertaken this work by seeking input from key groups and by holding more than 25 information sessions across the country—including a technical briefing at the Assembly of First Nations' Annual General Assembly to raise awareness of the CHRA.

The three national Aboriginal organizations whose members are most affected by the repeal—the Assembly of First Nations, the Native Women's Association of Canada, and the Congress of Aboriginal Peoples—are also working closely with the Commission and providing important advice and perspectives.

The Commission also surveyed a cross-section of Aboriginal groups (including women's groups; and national, regional and local organizations) to learn about their needs for awareness and training on the *Canadian Human Rights Act* and the role of the Commission. The survey indicated higher levels of awareness around international human rights instruments, and only medium-level awareness of the Commission and the CHRA.

Over 70% of survey participants indicated a desire for future human rights training, and look to the Commission as a partner in this regard. To raise awareness, a number of barriers must be addressed: the fiscal and human resource limitations of Aboriginal communities; geographic challenges in reaching isolated communities; and cultural and linguistic differences. The survey also identified the need for culturally relevant educational materials and training and dialogue sessions.

With the Native Women's Association of Canada, the Commission is developing a plain language guide to assist people in understanding the principles in the CHRA and Commission processes. A second, more detailed guide is being developed to assist First Nations managers and their organizations to understand and apply the CHRA in the workplace.

The Commission is also studying dispute resolution approaches already being used in First Nations communities, and determining how these approaches can be more broadly of assistance in resolving human rights disputes that would otherwise come to the Commission as complaints.

Some Aboriginal organizations operating or administering programs and services under the *Indian Act* have expressed an interest in developing or refining internal processes and are working with the Commission to create pilot projects. The results of these projects will contribute to the development of a learning guide and best practices for others who may choose to develop their own internal processes.

The overall result of these activities is a better understanding of the unique human rights challenges facing Aboriginal people, leading to strategies for how the Commission can both provide support within Aboriginal communities for better management of human rights issues where they arise, and also adapt its own processes to reflect Aboriginal culture and values.

The National Aboriginal Initiative – balancing individual and collective rights

Bill C-21, which repealed section 67 of the *Canadian Human Rights Act*, requires that "due regard" be given to First Nations legal traditions and customary laws, particularly the balancing of individual rights against collective rights, to the extent that they are consistent with the principle of gender equality.

This is the first time that collective rights of Aboriginal peoples have been expressly recognized in Canadian administrative legislation. It presents an opportunity to develop a shared understanding, with Aboriginal people, of what that means in a human rights context.

To inform future application of the "due regard" requirement, the Commission completed *Balancing Individual and Collective Rights*, an independent expert research report; and is also undertaking intensive gender analysis research and seeking input from a number of stakeholders, including Aboriginal peoples and their leadership.

Public information

The Commission's website and publications such as *A Guide to the Canadian Human Rights Act*, *Dispute Resolution*, and *Duty to Accommodate* are important sources of information for Commission stakeholders and the public. In 2009, Canadians requested 51,000 publications and the website was visited 1.4 million times.

The Universal Periodic Review

In 2006, the UN General Assembly created the Universal Periodic Review process, whereby the human rights record of each of the 192 UN Member States is reviewed once every four years by the UN Human Rights Council.

Canada's review took place from February to June 2009. In preparation for that review, the Commission made a written submission to the Human Rights Council, based on extensive research and consultations with all provincial and territorial human rights commissions in the country and more than 60 Non-Governmental Organizations.

At the conclusion of the review, the Human Rights Council made 68 recommendations to Canada, to which Canada responded by fully accepting 32 recommendations, partially accepting 22, and rejecting 14. In its response, Canada also made a number of commitments to the Council.

The Commission also presented a statement to the Human Rights Council's 11th Regular Session in Geneva on June 9, 2009, highlighting both the usefulness of the Universal Periodic Review and the work still to be accomplished in Canada, especially in relation to the social equality of disadvantaged groups. The Commission called on Canada to establish a national mechanism —which would include human rights commissions and civil society across the country—to implement and report on its international commitments.

The Commission's policy on drug and alcohol testing

The Canadian Human Rights Commission revised its policy on drug and alcohol testing to clarify the rights and responsibilities of employers, employees and job applicants.

The policy states that unless they are bona fide occupational requirements, pre-employment and random drug testing is discriminatory. An employer can engage in random—but not pre-employment—alcohol testing of employees in safety-sensitive positions such as airline pilots or truck drivers; but such testing is unacceptable in non-safety-sensitive positions. Employers who test for drugs and alcohol must accommodate, up to the point of undue hardship, those who test positive and are determined to be dependent on drugs or alcohol. The Commission recommends that employers who are concerned about drug or alcohol use adopt comprehensive workplace assistance programs, and provide education and health promotion, off-site counselling, referral services and monitoring.

Available on the Commission's website

Visit the Commission's website to explore the links and resources listed below; access the Annual Report from the home page and follow the link provided under the "Links and Resources" heading.

- Universal Periodic Review Submission
- National Aboriginal Initiative resource page
- Canadian Human Rights Commission Policy on Drug and Alcohol Testing
- *Balancing Individual and Collective Rights: Implementation of Section 1.2 of the Canadian Human Rights Act*
- The Commission's Address to the Human Rights Council during Canada's Universal Periodic Review

Links:

- *Report of the Working Group on The Universal Periodic Review* (68 Recommendations)
- Canada's Universal Periodic Review Response to the 68 Recommendations
- *R. v. Gladue,* [1999] 1 S.C.R. 688
- *McIvor v. Canada (Registrar of Indian and Northern Affairs),* 2009 BCCA 153

INTEGRATING HUMAN RIGHTS INTO DAILY PRACTICE

Everyone has a role in creating and nurturing a human rights culture within Canada. Positive, lasting change requires collective action. Canada has made great progress in human rights, yet much remains to be done. The nature of the human condition and human rights in Canada means that as our society evolves, new challenges emerge. The Commission collaborates with numerous stakeholders to identify common objectives, raise awareness, promote understanding and develop solutions to new and existing challenges.

Creating a Self-Sustaining Human Rights Culture – the Maturity Model

In the workplace, integrating human rights into all aspects of an organization is good for people and good for business. It can contribute to a positive work environment, strong motivation and increased productivity. It can enhance competitiveness, and recruitment and retention of the best employees. Conversely, undercurrents or actions of prejudice and discrimination can impact team cohesion, cost time and money, and cause damage to an organization's business and reputation.

The Commission has found that most organizations recognize the importance of fostering a diverse and respectful workplace culture, yet they lack the knowledge or tools required to meet their objectives.

In response, the Commission has moved beyond explaining *why* they should protect human rights and has turned its focus to showing them *how* with its new "Human Rights Maturity Model."

The first of its kind in the world, the Maturity Model will serve as a roadmap and performance measurement framework for employers, service providers, bargaining agents and employees as they transition their organizations to a self-sustaining human rights culture by fully integrating human rights in all policies, practices and processes—internally and for front-line service delivery. Aligning internal cultures with front-line service expectations can also contribute to the achievement of organizational business objectives and commitments to corporate social responsibility.

What is a "human rights culture"?

An organization has successfully achieved a human rights culture when its commitment to equality and respect influences every decision, at every level—from hiring and advancement, to policy and program development, to accommodating employees' special needs, to serving clients and customers in a respectful manner.

> "A human rights culture [is] an environment where human rights are integrated into daily practice, where every individual feels respected and equal; and where all can make for themselves the careers that they are able and wish to have, free from discrimination."
>
> Jennifer Lynch, Q.C., Chief Commissioner of the Canadian Human Rights Commission, speaking at the National Council of Visible Minorities 7th Symposium and National General Meeting September 9, 2009

Human rights training initiatives

The Commission provides human rights training to federally regulated organizations. The training develops in-house trainers whom the Commission qualifies to deliver skill-building workshops for employees. The objective is to enhance the organization's capacity to recognize and respond to issues of discrimination. By "training the trainers," the Commission leverages its resources and expertise.

The Commission also provides training to organizations on how to improve the efficiency and accuracy of their internal human rights investigations by basing their processes on the Commission's own investigation model.

To date, the Commission has qualified trainers within 12 federally-regulated organizations, with a possible impact on more than 280,000 employees.

The Maturity Model provides a common language and a shared vision. It outlines steps that an organization must take if it seeks to grow, from a reactive to a proactive environment.

The tool is a step-by-step process that leads to improved levels of human rights maturity. It builds on five key elements:

- leadership and accountability;
- capacity building and resources;
- alignment of policies and processes;
- communication and consultation; and
- evaluation for continuous improvement.

The Commission is developing the Maturity Model and its measurement tools collaboratively with a diverse group of partners, including the Canadian Bankers Association; FETCO (Federally Regulated Employers – Transportation and Communications); Human Resources and Skills Development Canada; Canadian Labour Congress and other unions; and Canada Post Corporation, Canadian Pacific and other members of the CHRC Employer Advisory Council. The Commission is working closely with these partners to ensure that the Maturity Model responds to the unique needs of different employers, their employees and the public they serve. The concept is being validated with federally regulated employers and will soon enter the pilot phase.

Our stakeholders see the Maturity Model as a valuable tool. As more and more organizations choose to adopt the Maturity Model, it will contribute to defining a network of "employers of choice" for the Canadian workforce. As well, early adopters will comprise a peer network for knowledge sharing that will assist in the continuous improvement of practices. The Commission will serve as a centre of expertise for this knowledge. As a critical mass of organizations adopts the Maturity Model, the data collected by the measurement tool will provide the Commission with a snapshot of the maturity of human rights culture within Canada's federally regulated organizations—information that could serve to influence future research and work.

The Maturity Model is an instrument of positive change that reflects the Commission's new approach to preventing discrimination by assisting organizations in creating self-sustaining human rights cultures.

Fostering a human rights culture within the Commission

The Government of Canada's Public Service Employee Survey provides an opportunity for employees to rate their experiences working for a particular department or agency. This anonymous survey assesses numerous aspects of work within the federal government, such as planning and direction setting, managing of employees, and job satisfaction.

The findings of the 2008 Public Service Employee Survey were released in 2009. The Commission achieved outstanding results—in one published analysis of this survey by a workplace health and engagement expert, the Commission was ranked as the third best place to work in the federal government. Based on the survey, the Commission excelled in leadership, performance management, employee engagement and a culture of excellence.

"The diversity of our population needs to be up front in the development of public policy. Within the Public Service, we must take advantage of this diversity as well."

Wayne G. Wouters, Clerk of the Privy Council
2009 ADM Forum
October 15, 2009

"To optimize the performance of a multigenerational workforce, employers should seek to develop inclusive workplace cultures, and create flexible working arrangements, to accommodate the varying needs of individuals from across generations."

Tim Krywulak, Martha Roberts
Winning the "Generation Wars"
Conference Board of Canada
November 2009

Promoting Employment Equity

Furthering the Commission's work with organizations to integrate human rights into their daily practices are its efforts to increase representation within federally regulated organizations of the four designated groups: women, members of visible minorities, Aboriginal peoples and persons with disabilities. The Employment Equity Audit Program aims to identify and eliminate barriers to employment in areas such as recruitment, selection and hiring, development and training, promotion, retention and termination, and accommodation.

The program assists employers in implementing workforce practices that continuously improve employment equity in the workplace and make employment equity second nature to the organization. It helps employers improve their performance by highlighting gaps and providing targeted advice, tools and information to improve efficiency through compliance and progress audits conducted by Commission employees.

"Inclusive workplaces are central to a productive economy and a cohesive society. Workplaces should reflect the increasing diversity of Canada, in order to ensure that the talents of all workers can be fully developed and can contribute to our shared prosperity."

The Honourable Rona Ambrose, Minister of Labour
Speaking at the Royal Bank of Canada
April 7, 2009

"Immigrant-friendly programs or practices—those that promote cultural awareness and diversity, that expand a firm's recruitment methods, that offer bridging and mentoring services to new recruits, and that recognize foreign credentials—can have a significant impact on an organization's bottom line."

Vadim Kukushkin, Douglas Watt
Immigrant-Friendly Businesses
Conference Board of Canada
November 2009

Profile of employers subject to the Act

Figure 1 shows the number of employers in each sector that are subject to the *Employment Equity Act* and the number of employees. The table also shows the number of employers that have been audited or are currently being audited.

Figure 1 – Employers and employees by industry sector, subject to the *Employment Equity Act*, audited or under audit

SECTOR	SUBSECTOR	SUBJECT TO THE ACT		COMPLETED OR UNDER AUDIT	
		Employers	Employees	Employers	Employees
Private Sector (as of December 31, 2008)	Banking	26	212,020	17	173,475
	Communications	92	234,338	46	171,944
	Transportation	347	206,111	111	134,802
	Other	79	91,418	37	62,771
	Sub-Total	544	743,887	211	542,992
Federal Public Service (as of March 31, 2009)		74	195,667	70	170,869
Separate Federal Agencies (as of November 2009)		17	71,491	13	70,590
Other Public Sector Employers (as of March 31, 2009)		2	136,200	2	136,200
	Sub-Total	93	403,358	85	377,659
TOTAL		**637**	**1,147,245**	**296**	**920,651**

Employers and employees currently subject to the *Employment Equity Act*

As Figure 1 shows, 296 (46%) of the 637 employers under the Act have been audited or are in the process of being audited. These 296 employers comprise 80% of the workforce (920,651 employees). There has been an increase of about 30,000 employees this year (from 1,116,989 in 2008 to 1,147,245 in 2009).

Audit results

A total of 257 employers have been found to be in compliance with the requirements of the Act since 1998. This does not necessarily mean that these employers have achieved employment equity. It should be noted that when an employer is in compliance with the Act, it simply means that it has fulfilled the requirements of the Act.

While this is an accomplishment, there is still much work to be done. True employment equity will only be achieved when no person is denied employment opportunities or benefits for reasons unrelated to their ability.

The Commission is involved in two stages. Employers must first prepare an employment equity plan that demonstrates how they plan to eliminate employment barriers and under-representation of designated group members in the workplace. The Commission undertakes 'preliminary audits' to verify that this has been done. This year, the Commission completed 32 preliminary audits, and of these, 19 employers had prepared employment equity plans that met the requirements of the Act and were therefore found in compliance.

After an employer has prepared an employment equity plan, it is then given up to three years to fulfill the short-term goals articulated in the plan. The Commission then returns to the employer to conduct a progress assessment audit. The Commission completed 19 of these audits this year; 13 employers were found to have implemented their plans to an extent sufficient to be found in compliance with the Act.

The Commission has the power under the Act to issue "directions" instructing non-complying employers to remedy their non-compliance.

Figure 2 – Designated groups in the private sector

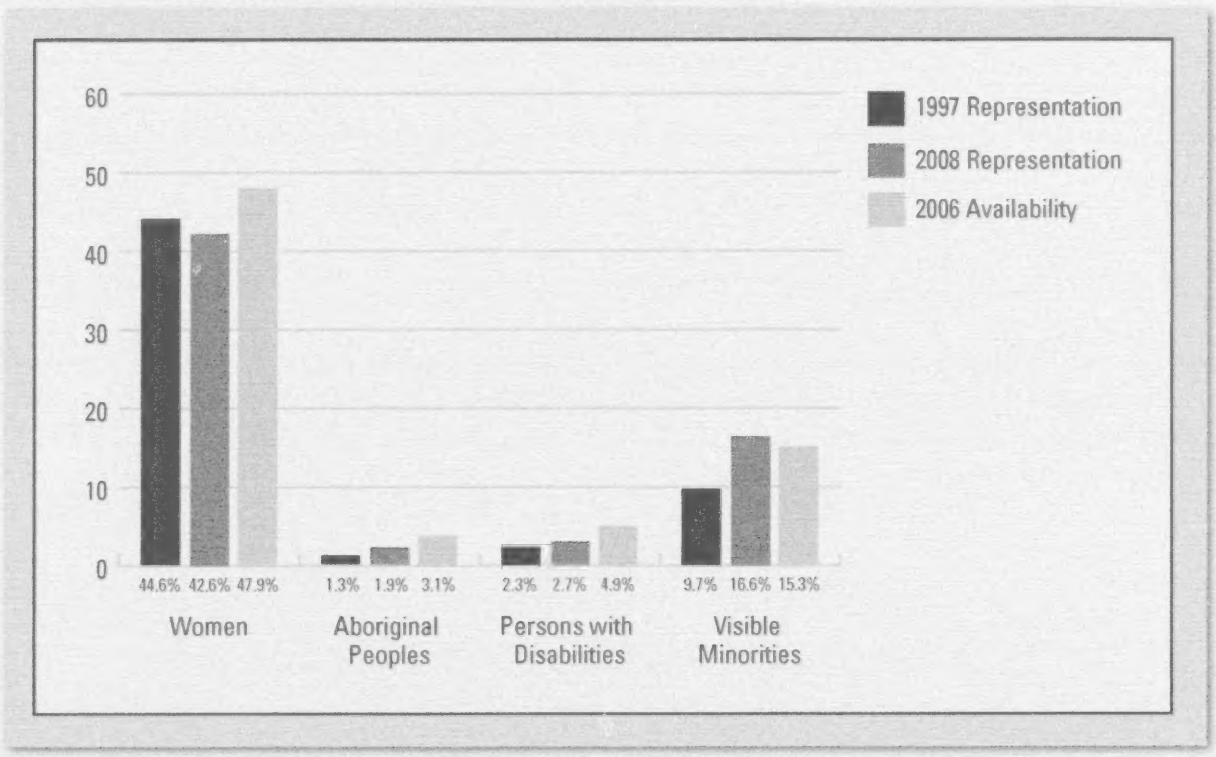
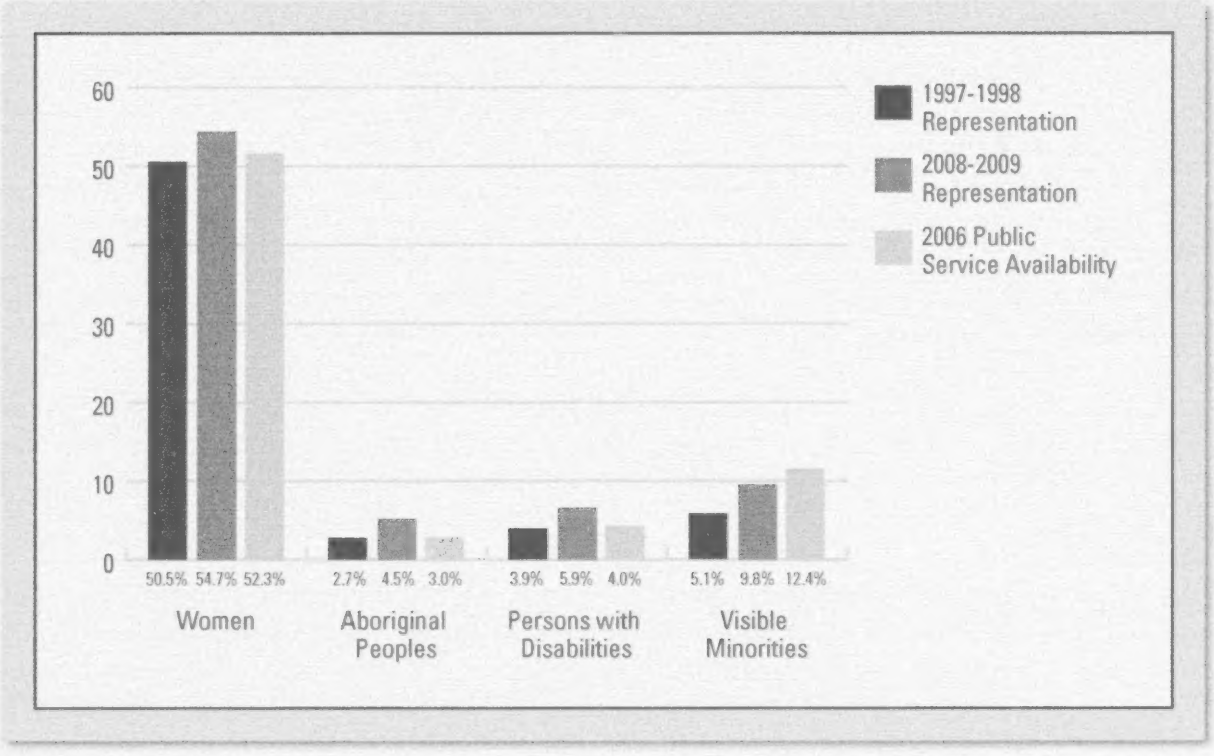


Figure 3 – Designated groups in the public service



Portrait of the four designated groups in federally regulated organizations

The Commission tracks the representation levels of the four designated groups covered by the *Employment Equity Act* (women, visible minorities, Aboriginal peoples and persons with disabilities) in the public sector and in federally regulated private industries such as banking, communications and transportation.

The goal is to achieve representation for each of the four groups equal or greater than their availability—the number of qualified workers available in the labour market.

Figure 2 shows that in federally regulated private sector organizations covered by the *Employment Equity Act,* visible minorities are fully represented. However, the other three designated groups—women, Aboriginal peoples and persons with disabilities—continue to be underrepresented. In fact the share of jobs held by women has dropped by 2% since 1997. Aboriginal peoples and persons with disabilities have made some gains but remain underrepresented based on the 2006 Census.

Figure 3 shows that in the public service, three of the four groups—women, Aboriginal peoples and persons with disabilities—continue to be fully represented. Members of visible minorities remain underrepresented in the public sector when compared to their availability based on the 2006 Census. This group has an availability of 12.4% but a representation of 9.8%. Significantly, women now account for 43.0% of executives, up from 25.1% in 1997-1998.

Visit the Commission's website to see employment equity statistics; access the Annual Report from the home page and follow the link provided under the "Links and Resources" heading.

Canada's growing ethnic diversity

"Between 2001 and 2006, the visible minority population increased at a much faster pace than the total population. Its rate of growth was 27.2%, five times faster than the 5.4% increase for the population as a whole."

Statistics Canada
Canada's Ethnocultural Mosaic, 2006 Census: National picture

"Over half (51%) of recent immigrants, those who had immigrated to Canada between 2001 and 2006, had a university degree. This was more than twice the proportion of degree holders among the Canadian-born population (20%) and also much higher than the proportion of 28% among immigrants who arrived before 2001."

Statistics Canada
Educational Portrait of Canada, 2006 Census: Highlights

"In 2006, very recent immigrants (aged 25 to 54) faced the most difficulties in the labour market, regardless of their level of education. For example, very recent immigrants with bachelor's degrees had an unemployment rate that was almost four times the unemployment rate for the university-educated Canadian born (11.4% vs. 2.9%). The unemployment rate for very recent immigrants with a graduate degree increased further still to 12.4% compared to 2.4% for Canadian born."

Danielle Zietsma, *The Canadian Immigrant Labour Market in 2006: First Results from Canada's Labour Force Survey*

"[The] *Employment Equity Act* is Canada's most important advancement so far in building a diverse and inclusive society.... The ability to earn a good living, to support your family and to advance in your career is central to anyone's sense of self-worth and dignity."

The Honourable Donald H. Oliver, Q.C., Senator
Making the Case for Diversity Today – A Canadian Perspective
October 18, 2007

Proven practices

Through its employment equity audit process, the Commission gathers valuable information on organizational strategies and proven practices that have successfully increased representation of the designated groups. This information is shared with employers during the audit process, as well as during employment equity workshops and training sessions.

The Joint Employment Equity Committee

The *Employment Equity Act* requires that employers consult with employee representatives by inviting them to provide their views concerning most aspects of the employment equity process. It also requires employers and employee representatives to collaborate in the preparation, implementation and revision of the employer's employment equity plan.

Telus and its employees (represented by the Telecommunications Workers Union) have signed a letter of agreement affirming their intent to further the aims of employment equity.

Both parties are equally represented on the Joint Employment Equity Committee, which has a lead role in preparing and implementing the company's employment equity plan and communicating diversity issues to employees. The Committee also conducts a yearly review of the company's progress towards achieving equity in the workplace and highlights areas that require attention.

Resolving Disputes

If an organization's efforts to prevent discrimination fail, a human rights issue can be brought to the Commission. The Commission is dedicated to resolving disputes in a fair, transparent and effective way. The Commission continues to place emphasis on early dispute resolution through mediation and informal dialogue. These methods allow the parties to craft their own solutions, can help minimize and repair the damage to employment relationships, and can be quicker. The benefits of mediation can extend beyond the parties' resolving their disputes, as some settlement terms also provide for systemic and policy changes that benefit Canadian society as a whole.

If a dispute cannot be resolved through dialogue or mediation and the inquirer wishes to pursue the matter, he or she can file a complaint. Once the complaint is accepted, the Commission's new triage function ensures that each complaint is addressed using the most appropriate and timely process.

In each case, the Commission is required to render a decision on the complaint. The Commissioners can dismiss the complaint, appoint a conciliator, or refer the matter to the Canadian Human Rights Tribunal for further inquiry.

Distinguishing between the Commission and the Tribunal

Both the Canadian Human Rights Commission and the Canadian Human Rights Tribunal are part of the administration of the human rights system and conduct their processes according to the rules of procedural fairness and natural justice, yet they are separate and independent organizations with distinct roles. The Commission receives all complaints and screens them for jurisdiction, timeliness and validity of the subject matter. If the Commission finds that a complaint warrants further inquiry, it refers the case to the Canadian Human Rights Tribunal. The Tribunal is the hearing body, providing the venue for all parties to present their arguments and call witnesses in a public, quasi-judicial setting. The Tribunal's determinations on whether there has been discrimination based on a prohibited ground and decisions about appropriate remedies have the force of a court order.

Complaints filed with the Commission

At year-end, the Commission had an increase in active caseload of 653 complaints, up from 568 the previous year. The average age of the Commission's active caseload decreased to 7.8 months in 2009 from 8.9 months in 2008—against the defined target of nine months. This decrease was, in part, due to an influx of new complaints late in 2009.

Visit the Commission's website to see detailed dispute resolution statistics on the complaints received by the Commission; access the Annual Report from the home page and follow the link provided under the "Links and Resources" heading.

A settlement through mediation

The Commission continues to encourage early dispute resolution. Here is an example of a settlement that was reached through mediation.

Ground(s):	Disability
Area:	Provision of a service
Sector:	Transportation
Allegation:	The complainant walks using a cane. She alleged that she had difficulty accessing one of the stations in the transportation company's operation. Her concerns included such things as lighting, signage, and slope of pathways.
Settlement:	The transportation company agreed to modify, repair and/or upgrade their station within a reasonable time.

Visit the Commission's website to see more settlement examples: Access the Annual Report from the home page and follow the link provided under the "Links and Resources" heading.

"...discrimination, especially against visible minorities, aboriginal people and the disabled, continues unfortunately apace. Yes, the Charter of Rights and Freedoms has lessened discrimination by government, but the Charter does not apply to discrimination by one private citizen or company against another. If I refuse you a job because you are Aboriginal or a person of colour or wear a head scarf, the Charter is of no use at all. Only human rights agencies (commissions or tribunals) offer legal remedies to such problems."

Janet Keeping, President of the Sheldon Chumir Foundation for Ethics in Leadership
"Human rights commissions still needed",
The Calgary Herald
January 23, 2008

Leading by Example

Workplace diversity

The Commission consistently serves as a model of compliance under the *Employment Equity Act*.

In 2009, of the Commission's 179 employees:

- 64.2% were women (against a target of 62%);
- 10.6 % self-identified as being persons with disabilities (against a target of 3.7%);
- 15.1% self-identified as being members of visible minorities (against a target of 10.3%); and
- 3.4% self-identified as being Aboriginal peoples (against a target of 3.4%).

Bilingual workplace

The Commission has also achieved its goal of being a model of good management. This includes its commitment to providing a fully-bilingual workplace in which employees may work in the official language of their choice:

- 77.65% of positions at the Commission were designated and filled as bilingual imperative.
- In response to the 2008 Public Service Employee Survey, and exceeding the government-wide average, 95% of Commission employees said they felt free to use the language of their choice when communicating with their immediate supervisor and 91% felt free to use the language of their choice in meetings.
- Designated Official Languages Champions serve as role models in promoting the principles in the *Official Languages Act* and are involved with Commission leadership in addressing any official languages issue that may arise with employees or stakeholders.

Promoting awareness and understanding

The Commission encourages organizations to be employers of choice by creating inclusive, accommodating working environments. It leads by example by ensuring that its own work environment meets these criteria, by articulating its commitment frequently to employees, and by promoting awareness among its employees through training and information sessions.

This year, all Commission staff had the opportunity to attend experiential training regarding the day-to-day challenges of living with a disability. Another workshop increased employees' understanding of how to best accommodate mental illness and provided strategies for promoting mental health.

Available on the Commission's website

Visit the Commission's website to explore the links and resources listed below; access the Annual Report from the home page and follow the link provided under the "Links and Resources" heading.

- Employment Equity Statistics
- Settlement Examples
- Dispute Resolution Statistics

ADVANCING THE HUMAN RIGHTS SYSTEM

Canada's commitment to equality and dignity for every individual has created the framework for the most open, inclusive and ethnically-diverse country in the world. Despite Canada's collective accomplishments, persistent human rights challenges continue to exist and new understandings and expectations arise.

For example, while intentional discrimination is no longer as prevalent, some policies and practices still have an unintended discriminatory effect. And with the emergence of issues such as security and terrorism, or the widespread use of Internet, comes the need to balance human rights protections.

The Commission has a key role in identifying these issues and preparing the research and recommendations that will support Canada's ability to sustain its human rights commitments. Three further examples of the Commission's role as a catalyst in the development of the human rights system are described in this section.

Balancing Rights that Appear to be in Conflict – Freedom of Expression and Hate on the Internet

The *Canadian Charter of Rights and Freedoms* guarantees all Canadians the right to freedom of expression. The Charter also guarantees all Canadians the right to equality. Extreme hateful expression places these two rights in conflict. Recognizing that no right is absolute, legislators have developed laws and courts have developed jurisprudence that gives guidance in balancing these rights.

Canada's current approach to regulating hate messages—and achieving the necessary balance—involves two avenues of law: the *Criminal Code* and section 13 of the *Canadian Human Rights Act*. The two laws address the issue of hateful expression in different ways. The *Criminal Code* seeks to punish the offender, while the *Canadian Human Rights Act* seeks to remove hateful messages.

Recently, many Canadians have been engaged in a passionate debate that questions Canada's current mechanisms for preventing hate messages. The Commission's role and its mandate in Section 13 of the *Canadian Human Rights Act* have been at the centre of this discussion.

This debate became focused on a complaint brought against Rogers Communications, owner of *Maclean's* magazine, by complainants who believed that an article in the magazine constituted hate messaging within the meaning of the *Canadian Human Rights Act*. The Commission dismissed the complaint in 2008 because the content in question did not meet the narrow definition of hate messaging and therefore further inquiry before the Canadian Human Rights Tribunal was not warranted:

> The writing is polemical, colourful and emphatic, and was obviously calculated to excite discussion and even offend certain readers ... Overall, however, the views expressed ... when considered as a whole and in context, are not of an extreme nature as defined by the Supreme Court in the *Taylor* decision.
>
> Decision of the Canadian Human Rights Commission in *Canadian Islamic Congress v. Rogers Media Inc.* (June 25, 2008)

By dismissing the complaint, the Commission upheld the respondent's right to freedom of expression, yet still some claimed that the respondent's rights were violated by the fact that the Commission received the complaint at all.

Throughout the debate, Canadians witnessed public discourse at its best and its worst. Misinformation, rhetoric and unsubstantiated attacks on the Commission and its staff detracted from the valid question: how can Canada's approach to balancing these rights be improved?

The Commission presented its best advice on this issue by tabling a Special Report to Parliament, *Freedom of Expression and Freedom from Hate in the Internet Age*. The Chief Commissioner then appeared before the Standing Committee on Justice and Human Rights to provide further insight into the matter.

The Report was the result of a multi-part study by the Commission: an independent review of section 13 by Professor Richard Moon of the University of Windsor, submissions sought by the Commission from various stakeholders, and an internal policy review. It therefore comprised the Commission's comprehensive and balanced analysis of this complex issue, including recommended amendments to section 13, and observations concerning the *Criminal Code* provisions relating to hate messages.

Visit the Commission's website to read the Commission's Special Report to Parliament: *Freedom of Expression and Freedom from Hate in the Internet Age*; access the Annual Report from the home page and follow the link provided under the "Links and Resources" heading.

Reviewing Section 13 – The Commission's Special Report to Parliament

The Commission's Special Report to Parliament: *Freedom of Expression and Freedom from Hate in the Internet Age* concluded that both the *Criminal Code* and section 13 of the *Canadian Human Rights Act*, each with its own purpose, are effective in dealing with hate messages on the Internet. The Commission also proposed amendments to the *Canadian Human Rights Act* that would improve Canada's ability to remove hate messages:

- Add a statutory definition of "hatred" and "contempt" in accordance with the definition applied by the Supreme Court of Canada.
- Allow for an award of costs in exceptional circumstances where the Tribunal finds that a party has abused the Tribunal process.
- Include a provision to allow for the early dismissal of section 13 complaints when messages do not meet the narrow definition of hatred or contempt.
- Repeal the penalty provision that allows the Tribunal to fine those who violate section 13.

The Special Report recognizes a core principle of the Commission's approach to fulfilling its mandate: human rights law must evolve to keep pace with the complexities of society. Ensuring that our laws are effective in balancing our rights is a responsibility that ultimately belongs to Parliament.

And, of course, ensuring that these rights extend to everyone in Canada is a responsibility that belongs to us all.

Visit the Commission's website to read the Commission's Special Report to Parliament: *Freedom of Expression and Freedom from Hate in the Internet Age*; access the Annual Report from the home page and follow the link provided under the "Links and Resources" heading.

Representing the Public Interest

When cases involve broad public policy concerns or public values as set out in the *Canadian Human Rights Act*, the Commission is responsible for representing the interests of Canadian society as a whole—the public interest.

The Commission fulfills this responsibility by intervening in cases before the Human Rights Tribunal, the Federal Court Trial Division and the Federal Court of Appeal, and the Supreme Court of Canada, strategically selecting cases that will have the greatest impact on Canadians and human rights law—cases that clarify, influence, shape or define human rights law, or have far reaching implications for a specific industry or activity.

The Commission's involvement in these cases contributes to its responsibility to be a proactive and influential catalyst for moving forward on human rights issues. Court and Tribunal decisions based on the Commission's submissions made in the public interest, further jurisprudence and support human rights for all.

Jurisprudence that clarifies rights and obligations is a critical step. And yet, a next step is always necessary: it is important for employers and service providers to inform themselves of these judicial rulings and adapt their future actions accordingly.

> "The focus of the *Human Rights Act* is the message itself, not the wrongdoer. Its purpose is to protect society from the baleful consequences of those most dangerous messages."
>
> Mark J. Freiman, President of the
> Canadian Jewish Congress
> Before the Parliamentary Standing
> Committee on Justice and Human Rights
> October 26, 2009

High impact cases

Eddy Morten v. Air Canada

Eddy Morten is deaf, blind in his left eye, and has limited vision in his right eye. In August 2004, he booked a flight on Air Canada and informed the airline that he was deaf/blind and that he wanted to travel unaccompanied. Air Canada denied the request, stating that Mr. Morten would be required to travel with an attendant.

The Canadian Human Rights Tribunal ruled that service providers such as Air Canada cannot deny services to persons based merely on the fact that they have a particular disability. In cases where persons do have one or more disabilities that might not be able to be accommodated without undue hardship, an individualized assessment must occur.

As Mr. Morten did not receive such an assessment, Air Canada was found not to have accommodated him. The Tribunal ordered Air Canada to work with the Commission and Mr. Morten to develop an attendant policy that considers the communication strategies utilized by people such as Mr. Morten, the inherent risk posed by passengers with restricted mobility who are currently allowed to fly unaccompanied and the fact that in emergency situations, many able-bodied passengers are unable to receive, process and act on safety-related emergency instructions. Mr. Morten was also awarded $10,000 for pain and suffering.

The Tribunal did not rule on the issue of whether Mr. Morten should be allowed to fly unattended on Air Canada. It reasoned that he was denied the right to have his level of self-reliance (and the associated safety risk) assessed in a manner consistent with the *Canadian Human Rights Act*. The Commission is now defending the Tribunal's decision before the Federal Court of Canada.

Visit the Commission's website to read about more high impact cases that have had an effect on human rights in Canada; access the Annual Report from the home page and follow the link provided under the "Links and Resources" heading.

"Canadians with disabilities need Commissions to proactively remove barriers that prohibit our full and equal participation in Canadian society."

Marie E. White, Chairperson
of the Council of Canadians with Disabilities
An Open Letter to Members of Parliament
The Value of the Canadian Human Rights Commission to People with Disabilities
October 5, 2009

Strengthening the Role of National Human Rights Institutions

The United Nations High Commissioner for Human Rights recognizes the critical role of National Human Rights Institutions (NHRIs) in protecting and advancing human rights nationally, regionally, and internationally.

Globally, 65 countries have fully-independent and accredited NHRIs. These institutions belong to the International Coordinating Committee for the Promotion and Protection of Human Rights (ICC), where they share knowledge and best practices, identify human rights issues of concern, and take coordinated action to improve the world's human rights situation. The ICC is a strong, credible, and influential international human rights actor. The Canadian Human Rights Commission chairs the ICC, and is now in the third year of a three-year mandate.

The Commission's accomplishments as Chair include progress in three areas: governance, human right issues and providing a strong voice in the international human rights system.

Governance activities included the implementation of new vigorous accreditation rules and procedures; the establishment of a new constitution and governance structure; the incorporation of the ICC as a nonprofit organization under Swiss law, and the development of a culture of cooperation, which has contributed greatly to achieving consensus and taking action on key human rights issues worldwide.

As Chair, the Commission has also led the ICC's engagement in several key human rights priorities including business and human rights; the right to education; the rights of persons with disabilities; the rights of indigenous people; women's rights; racism and discrimination; the prevention of torture; the administration of justice; and the rights of migrant workers.

The Commission has also led the ICC's participation in the broader international human rights system including the United Nation's Human Rights Council and the Commission on the Status of Women.

The Commission is also a member of the Network of National Human Rights Institutions of the Americas. The Commission led a successful advocacy project resulting in resolutions passed at the Organization of American States (OAS), which provide NHRIs with the independent right to participate in the human rights activities of the OAS.

The Commission was also elected Chair of the Commonwealth Forum of National Human Rights Institutions, for a two-year term. The Commission will work to strengthen the capacity of Forum members, facilitate greater collaboration among members, and make further progress on thematic human rights priorities such as exploring the link between climate change and human rights.

Available on the Commission's website

Visit the Commission's website to explore the links and resources listed below; access the Annual Report from the home page and follow the link provided under the "Links and Resources" heading.

- Special Report to Parliament: *Freedom of Expression and Freedom from Hate in the Internet Age*
- High impact human rights cases

Links:

- *Protect, Respect and Remedy: a Framework for Business and Human Rights*
- The Paris Principles
- The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights

The ICC Working Group on Business and Human Rights

The corporate sector is increasingly recognized as a key partner in the protection and promotion of human rights. National Human Rights Institutions are in a unique position to work with business to advance this important issue—facilitating dialogue and collaboration among business, government, NGOs and civil society.

The ICC Working Group on Business and Human Rights is the first opportunity to gather the significant expertise that has been developed by NHRIs around the world. As Chair of the ICC, the Commission led the creation of this Working Group and brings its expertise, including its groundbreaking work on the Maturity Model, to the group as Vice-Chair.

> "The actual and potential importance of [National Human Rights Institutions] cannot be overstated. Where NHRIs are able to address grievances involving companies, they can provide a means to hold business accountable. NHRIs are particularly well-positioned to provide processes—whether adjudicative or mediation-based—that are culturally appropriate, accessible, and expeditious."
>
> John Ruggie, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises
> Protect, Respect and Remedy: a Framework for Business and Human Rights
> April 2008